

recite inherent properties thereof. In particular, claim 1 now recites the limitation that the mixture obtained in the first step of the method is a "nitrate-free mixture" and that this mixture is processed to product "a nitrate-free product which is partially chelated". Claims 2-13 and 20-22 incorporate this limitation through their direct or indirect dependency from amended claim 1.

Amended claim 16 recites a composition "consisting essentially of a partially chelated mixture of a metal salt, citric acid and sodium citrate." Claims 17 and 18 incorporate this limitation through their dependence from amended claim 16.

Newly presented claim 23 recites "mixing a metal salt, citric acid and sodium citrate to obtain a nitrate-free mixture" and "processing the nitrate-free mixture in a drying environment to obtain a nitrate-free product which is partially chelated". Claims 24-30 incorporate these limitations through their dependence from claim 23.

Newly presented claim 31 recites a composition "comprising a nitrate-free, partially chelated mixture of a divalent metal salt, citric acid and sodium citrate" Claims 32-34 incorporate this limitation through their dependence from claim 31.

Each of these claims recite a product fully disclosed in Serial No. 08/755,236, and incorporate limitations which were inherent properties of the product. This conclusion is fully supported by the plain language of the specification of Serial No. 08/755,236, and by the Declaration Under 37 C.F.R. § 1.132 of Alan M. Robinett and Carl Schauble filed herewith.

In conformance with the 1995 decision by the Court of Appeals for the Federal Circuit in Therma-Tru Corp. v. Peachtree Doors, Inc., 44 F.3d 988, 992-933, 33 U.S.P.Q.2d 1274 (Fed.Cir. 1995), each of these claims is entitled to the priority/filing date of the parent application. Accordingly, the claims now presented do not include any new matter.

B. All Pending Claims are Distinguishable over Kimbro.

Independent claims 1, 16, 23 and 31 (and dependent claims 2-13, 17-18, 20-22, 24-30 and 32-34) are clearly distinguishable over Kimbro, which mandates the inclusion of concentrated nitric acid in a mixture to produce a chelated product using a method in which the chelation process is driven to completion/stabilization. In contrast, claims 1, 23 and 31 recite the creation of a "nitrate-free" mixture and/or product. Claim 16 relates to a composition "consisting essentially of" a partially chelated mixture containing a metal salt, citric acid and sodium citrate.



As an initial matter, there is no suggestion in Kimbro to omit the concentrated nitric acid. *Prima facie* obviousness based on Kimbro is thereby initially overcome. M.P.E.P. § 2143; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347 (Fed. Cir. 1992).

In addition, the proposed modification would render Kimbro unsatisfactory for its intended purpose, i.e., the Kimbro process would not be expected to proceed as described, and *prima facie* obviousness based on Kimbro is further overcome. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984); M.P.E.P. § 2143.01.

The case of *prima facie* obviousness is fully overcome because all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974); *In re Wilson*, 424 F.2d 1382 (C.C.P.A. 1970); M.P.E.P. § 2143.03. Kimbro does not teach or suggest all of the limitations of claims 1-13, 16-18, and 20-34 and thus these claims are patentably distinguishably over Kimbro and the references of record.

C. Conclusion.

Allowance of the present case is respectfully requested. Should any issues remain, the Examiner is asked to telephone the undersigned.

Respectfully submitted,

March 20, 1998



Carol W. Burton, Reg. No. 35,465  
HOLLAND & HART LLP  
Post Office Box 8749  
Denver, Colorado 80201-8749  
Telephone: (303) 295-8357  
Facsimile: (303) 295-8261

DENVER:0828886.01